SUPREME COURT OF INDIA

M/s. Ansal Properties & Industries Ltd.

Versus

State of Haryana & Anr.

CIVIL APPEAL NO. 8186 OF 2001

(R.V. Raveendran and Dr. Mukundakam Sharma)

23/01/2009

JUDGMENT

DR. MUKUNDAKAM SHARMA, J

1. The issue that falls for our consideration in this appeal is in respect of a demand of Rs. 61,000/- per gross acre, raised by the second respondent towards the external development charges but actually on account of construction of internal community buildings, with a further stipulation that no such charge would be realised from the plot holders.

2. The appellant has challenged the said demand of the second respondent as unlawful being contrary to the statutory provisions pertaining to the construction of internal community buildings, which only mandates transfer of land free of cost to the Government, if the Government so desires, but without providing for any amount chargeable from the licensee to the Government for the construction of these internal community buildings.

3. These challenges are made by way of filing the present appeal which is filed against the judgment and order of the Division Bench of the Punjab and Haryana High Court dated 29.07.1999 whereby the writ petition filed by the appellant was dismissed.

4. Appellant is a public limited company registered and incorporated under the Companies Act, 1956 and is into the business of real estate development and development of colonies. Since 1983, the appellant Company had been granted licenses by the Director, Town and Country Planning (for short "Director") being respondent No. 2 herein under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (for short the "Act") and Haryana Development and Regulation of Urban Areas Rules, 1976 (for short the "Rules") for setting up colonies in the District Gurgaon, Haryana. For the said purpose, agreements were entered into from time to time between the appellant Company and respondent No. 2 in the prescribed form i.e. LC-IV, under Rule 11 of the Rules. The said licenses were renewed from time to time.

5. As per clause 1 of the Licence Agreement, the licensee is required to fulfil the conditions laid down in Rule 11 of the Rules. However, before we go into the various terms and conditions of the licence, we think it to be useful to refer to and extract some of the relevant provisions of the Act read with the Rules. The said Act and Rules were framed to regulate the use of the land, in order to prevent ill planned urbanization in or around the towns in the State of Haryana and the same inter alia governs the grant of licence for colonizing upon terms set out in the licence agreement, which is given in the statutory form namely Form LC-IV. The relevant provisions of the Act are quoted hereunder:- "S.2. Definition. In this Act, unless the context otherwise requires: ....

(g) "external development works" include sewerage, drains, roads and electrical works which may have to executed in the periphery of, or outside, a colony for the joint benefit of two or more colonies:

(i) "internal development works" mean - metaling of roads and paving of footpaths;

(ii) turfing and plantation with trees as open spaces;

(iii) street lighting;

(iv) adequate and wholesome water-supply;

(v) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(vi) any other work that the Director may think necessary in the interest of proper development of a colony.

Section 3. Application for licence. (1) Any owner desiring to convert his land into a colony, shall, unless exempted under section 9, make an application, to the Director, for the grant of a licence to develop a colony in the prescribed form and pay for it such fee as may be prescribed. The application shall be accompanied by an income-tax clearance certificate.

(2)..........

(3) After the enquiry under sub-section (2), the Director by an order in writing, shall -

(a) grant, a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per centum of the estimated cost of development works as certified by the Director and has undertaken--

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted:

(ii).......................

(iii)..........................

(iv) to construct at his own cost, or get constructed by an other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institutions as it may deem fit;

(b).........

(4) The licence so granted shall be valid for a period of two years and will be renewable from to time for a period of one year, on payment of prescribed fee.

(5) A separate licence shall be required for each colony. Section 5. Cost of Development Works –

(1) The colonizer shall deposit fifty per centum of the amount realised, from time to time, by him, from the plot-holders within a period of ten days of its realisation in a separate account to be maintained in a scheduled bank. This amount shall only be utilized by him towards meeting the cost of internal development works in the colony. After the internal development works of the colony have been completed to the satisfaction of the Director, the colonizer shall be at liberty to withdraw the balance amount. The remaining fifty per centum of the said amount shall be deemed to have been retained by the colonizer, inter-alia to meet the cost of land and external development works.

(2) The colonizer shall maintain accounts of the amount kept in the scheduled bank, in such manner as may be prescribed.

Sec. 8 Cancellation of license –

(1) A license granted under this Act, shall be liable to be cancelled by the Director if the colonizer contravenes any of the conditions of the license or the provisions of the Act or the rules made there under, provided that before such cancellation the colonizer shall be given an opportunity of being heard.

(2) After cancellation of the licence, the Director may himself, carry out or cause to be carried out, the development works in the colony and recover such charges as the Director may have to incur on the said development works from the colonizer and the plot-holders in the manner prescribed as arrears of land revenue.

(3) The liability of the colonizer for payment of such charges shall not exceed the amount the colonizer has actually recovered from the plot-holders less the amount actually spent on such development works, and that of the plot-holders shall not exceed the amount which he would have to pay to the colonizer towards the expenses of the said development works under the terms of the

agreement of sale or transfer entered into between them;

Provided that the Director may, recover from the plot holders with their consent, an amount in excess of what may be admissible under the aforesaid terms of agreement of sale or transfer.

(4) Notwithstanding anything contained in this Act, after the colony has been fully developed under sub-section (2), the Director may, with a view to enabling the colonizer, to transfer the possession of and the title to the land to the plot-holders within a specified time, authorize the colonizer by an order to receive the balance amount, if any, due from the plot-holders, after adjustment of the amount which may have been recovered by the Director towards the cost of the development works and also transfer the possession of or the title to the land to the plot- holders within aforesaid time. If the colonizer fails to do so, the Director shall on behalf of the colonizer transfer the possession of and the title to the land to the plot-holders on receipt of the amount which was due from them.

(5) After meeting the expenses on developments works under sub-section (2), the balance amount shall be payable to the colonizer." Some of the provisions of the Rules which require mention are extracted herein below;

4. Percentage of area under of roads, open spaces etc. in layout plans section ; 3(4) and 24 :-

(1) In the layout plan of a colony other than an industrial colony, the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony :

Provided that the Director may reduce after recording reasons there for this percentage to a figure not below thirty- five where in his opinion the planning requirements and the size of the colony so justify.

(2) In the layout plan of an industrial colony, the land reserved for the purpose specified in sub-rule (1) shall not be less than thirty five percent of the gross area of the land under the colony :

Provided that the Director may reduce after recording reasons therefor this percentage to a figure not below twenty wherein his opinion the planning requirements and the size of the colony so justify.

5. Development works to be provided in colony; section 3(3) - The designs and specifications of the development works to be provided in a colony shall include:-

(a) metaling of roads and paving of footpaths ;

(b) turfing and plantation with trees of open spaces ;

(c) street lighting ;

(d) adequate and wholesome water supply ;

(e) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal ; and

(f) any other works that the Director may think necessary in the interest of proper development of the colony.

11. Conditions required to be fulfilled by applicant, Section 3(3) - The applicant shall:-

(a) furnish to the Director a bank guarantee equal to twenty five per cent of the estimated cost of the development work as certified by the Director and enter into an agreement in form LC-IV for carrying out and completion of development works in accordance with the licence finally granted;

(b) undertake to deposit fifty percent of the amount to be released by him from the plot holders, from time to time, within ten days of its realisation in a separate account to be maintained in a scheduled bank and this amount shall only be utilized towards meeting the cost of internal development works in the colony;

(c) undertake to pay proportionate development charges if the main lines of roads, drainage,

sewerage, water supply and electricity are to be laid out and constructed by the Government or any other local authority. The proportion in which and time within which such payment is to be made shall be determined by the Director.

(d) undertake responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health service for a period of five years from the date of issue of the completion certificate under rule 16 unless earlier relieved of this responsibility and thereupon to transfer for all such roads, open spaces, public marks and public health service free of cost to the Government or the local authority as the case may be;

(e) undertake to construct at his own cost or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the land set apart for this purpose, or undertake to transfer to the Government at any time if so desired by the Government free of cost, the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit; and

(f) undertake to permit the Director or any other officer authorized by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted.

(2) If the director, having regard to the amenities which exist or are proposed to be provided in the locality, decides that it is not necessary or possible to provide such amenity or amenities, the applicant will be informed thereof and clauses (c), (d) and (e) of sub-rule (1) shall be deemed to have been modified to that extent.

12. Grant of Licence. Section 3(3) and (4) –

(1) After the applicant has fulfilled all the conditions laid down in rule 11 of the satisfaction of the Director, the Director shall grant the licence in form LC-V.

(2) The licence granted under sub-rule (1) shall be valid for a period of two years from the date of its grant during which period all development works in the colony shall be completed and certificate of completion obtained from the Director as provided in rule 16.

Rule 14 of the Rules empowers the Director to renew the licence for a period of one year provided he is satisfied that the delay in execution of the development works was for the reasons beyond the control of the colonizer. Rule 18 on the other hand provides that where the execution of the lay out plan and construction of other work is not proceeded according to the licence granted under Rule 12, or is below the specification or is in violation of the provisions of any law or the Rules, the Director by a notice shall require the colonizer to remove various defects within the period specified in the notice and if the colonizer fails to comply with the requirements, after hearing the colonizer, the Director may either cancel the licence or grant him further time for complying with the requirement.

6. Form LC-III which is part of the Rules is the proforma of the letter to be written by the Director to the colonizer referring to his application for the grant of licence to set up a colony. The said proforma requires the Director to inform the colonizer that it was proposed to grant the licence to him for setting up a colony and that he should fulfil the conditions laid down in Rule 11. The said letter is to be sent by the Director in compliance with the provisions of Rule 10. It is only after receipt of the aforesaid letter that a colonizer enters into an agreement with the Director in Form LC-IV. The said Form LC-IV which is part of the statutory rule 11 is the format of the agreement which the owner of the land intending to set up a colony enters into with the Director for and on behalf of the Government of Haryana.

7. A bare look of the said agreement which is a part of the record would make it clear that many of the terms and conditions of the agreement are extracts of the provisions of the Act and the Rules. It is also provided in the said agreement that colonizer would carry out all directions issued by the Director for due compliance of the execution of lay out and development works in accordance with the licence granted.

8. It is also provided therein that without prejudice to anything contained in the said agreement, all the provisions contained in the Act and the Rules would be binding on the owner. In order to better appreciate the contention raised by the parties, we have extracted the relevant provisions of the Licence Agreement entered into between the appellant and respondent No. 2, herein.

1. In consideration of the Director agreeing to grant licence to the owner to set up the said colony on the land mentioned in Annexure hereto on the fulfillment of all the conditions laid down in Rule 11 by the Owner, the owner hereby covenants as follows:

a) That the Owner shall be responsible for the maintenance and upkeep of all roads open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate under rule 16 of the Rules unless earlier relieved of this responsibility, when

the Owner shall transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the Local Authority as the case may be.

b) That the Owner shall construct at his own cost or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community building on the land set apart for this purpose or undertake to transfer to the Government at any time, if so desired by the Government free of cost, the land set apart for schools, hospitals, community centres and other community buildings, in which case the Government shall be at the liberty to transfer such land to any person or institution including Local Authority on such terms and conditions as if may lay down.

c) That the owner shall deposit fifty percent of the amount realized by him from plot holders, from time to time, in a separate account to be maintained in a Scheduled Bank and that this amount shall only be utilized by the Owner towards meeting the cost of internal development works in the colony.

d) That the Owner shall permit the Director or other Officer authorized by him in this behalf to inspect the execution of the layout and the development works in the colony and the Colonizer shall carry out all directions issued by him or ensuring due compliance of the execution of the layout plans and the development works in accordance with the licence granted.

e) That the Owner shall pay proportionate development charges as and when required and as determined by the Director in respect of external development charges.

f) That without prejudice of anything contained in this agreement all the provisions contained in the Act, and these rules shall be binding on the Owner.

2. Provided always and it is hereby agreed that if the Owner commit any breach of the terms and conditions of this agreement or violate any provisions of the Act or these rules, then and in any such case, and notwithstanding the waiver of any previous clause or right, the Director, may cancel the licence granted to him.

3. Upon cancellation of the licence under Clause 2 above the Govt. may acquire the area of the aforesaid colony under the Land Acquisition Act, 1894 and may develop the said area under any other law. The Bank Guarantee in that events shall stand forfeited in favour of the Director.

4. The stamp and registration charges on this deed shall be borne by the Owner.

5. The expression "the Owner" herein before used shall include his heirs, legal representatives, successors and permitted assigns.

The last clause (clause 6) provides that on completion and grant of the completion certificate, the Director may release the bank guarantee on the application filed by the appellant Company.

9. In the present case, the respondent No. 2 by letter dated 11.01.1988 informed the appellant Company that it was required to pay due amount of Rs. 3.72 lacs per gross acre on account of external development charges. It was also mentioned in the said letter that an amount of Rs. 3.72 lacs per gross acre, in fact includes Rs. 61,000/- per gross acre on account of internal community buildings for which no recovery should be made from the plot holders. It was also mentioned in the said letter that credit would be given by Haryana Urban Development Authority for the internal community buildings already constructed by the colonizer namely the appellant. Again under letter dated 07.10.1993, the Appellant Company was informed that before its licence could be considered for renewal, the appellant Company was required to pay the aforementioned charges. Subsequently on 04.05.1994, respondent No. 2 issued letter to the appellant informing that the licence of the appellant would be renewed only after the deposit of the aforesaid amount. Aggrieved by the aforesaid letter, the appellant Company made several representations to respondent Nos. 1 and 2 contending inter alia that as per the licence agreement and also as per the provisions of the Act and the Rules the appellant Company was not liable to pay the amount of Rs. 61,000/- per gross acre towards the construction of internal community buildings. It was also submitted in the said representations by the appellant that the Director had wrongly included the above said amount and the said demand was not only unjust and arbitrary but also contrary to licence agreement and also against the provisions of the Act and the Rules framed there under.

10. As its aforesaid representations did not bear any fruits, the appellant Company filed a writ petition before the Punjab and Haryana High Court challenging the demand letters dated 11.1.1988, 17.10.1993 and 4.5.1994 to the extent of demand for Rs. 61,000/- per acre (and interest thereon) on account of internal community buildings, by including it in the external development charges. The appellant also contended inter alia that as per provisions, the licensee was required to construct at his own cost either itself or through an institution or individual, the schools, hospitals, community centres and other community buildings or to transfer to Government free of cost the land set apart for schools, hospitals, community centres and other community buildings.

11. It was further submitted that in terms of the aforesaid provision, the appellant licensee was not required to pay for the development of those buildings in case the land is transferred to the

Government free of cost. It was also pointed out by the appellant that in fact such a demand made by the respondent No. 2 is beyond the competence of the Government as any payment made for such development would not only be against the provision of the Act and the Rules framed thereunder but would also be against the principles of unjust enrichment.

12. The Punjab and Haryana High Court considered the aforesaid Writ Petition and thereafter by the impugned judgment and order dated 29.7.1999 rejected the contentions of the appellant holding that the appellant had failed to develop the said buildings which it was obliged to do and thus the Director was justified in demanding the said amount from the appellant Company which would be invested for the construction of these buildings only. Aggrieved by the said judgment and order, the present appeal is preferred by the appellant Company on which we have heard the learned counsel appearing for the parties.

13. The aforesaid contentions which were raised by the appellant in the various representations submitted were reiterated before us by Mr. Arun Jaitley, the learned senior counsel appearing for the appellant. It was further submitted by him that the Director, respondent No. 2 herein, while making the unlawful demand of Rs. 61,000/- per gross acre in the name of construction of internal community buildings, had acted arbitrarily, unfairly and unreasonably inasmuch as he had no power or authority to include the cost of internal community buildings in the external development charges.

14. Mr. Anoop G. Chaudhary, learned senior counsel appearing for respondent No. 2, however, took up various pleas in order to support the demand made by the respondent No. 2. It was submitted by him that the entire transaction and the demand made is covered by the Act and the Rules framed thereunder. He submitted that the appeal is liable to be dismissed as the writ petition itself was not maintainable, inasmuch as, the contention of the appellant is that the impugned demand made is outside the provisions of the Act and the Rules and there fore the actual remedy that was available to the appellant to challenge said demand was by way of filing a civil suit.

He also submitted that the present writ which is filed by the appellant is in the nature of claim for rendition of accounts for which the writ is not a proper remedy. He submitted that on both the aforesaid counts, the writ petition is required to be dismissed. He also submitted that the demand made is within the jurisdiction and parameters laid down in section 3(3)(a) (iv) of the Act and therefore, the challenge made to the aforesaid demand is unfair and unjustified.

He also advanced an alternative argument contending inter alia that if the aforesaid contentions are not accepted, even in that event, the entire amount for which demand was raised has since been paid by the appellant and therefore, the principle of waiver and acquiescence will apply to the facts and circumstances of the present case.

15. So far the contentions with regard to the maintainability of the writ petition is concerned, we are not impressed and persuaded with the aforesaid contentions as according to the respondent themselves, the aforesaid demand is being made within the parameter and ambit of the provision of section 3(3)(a)(iv). That being the position, the demand made according to the respondent is a statutory demand and therefore challenge to such a demand could always be raised by the appellant by filing a writ petition as such a demand is sought to be protected and supported by way of statutory provision.

16. Even if the appellant has taken up the plea that such a demand is not supported by the statutory provisions and is in fact in conflict with them, even then the issue pertains as to whether or not such a demand could be made and supported by the said provisions, in which case, a writ petition is competent and maintainable and the plea raised by the respondent therefore with regard to the maintainability of the petition is only to be rejected which we hereby do.

17. Section 3(3)(a)(iv) of the Act is the relevant provision and the merit of the claim and repudiation thereof is based on the interpretation of the said provision. It was pointed out on behalf of the appellant that 49 plots have been given by the appellant developer to the Government as community sites. Section 5 of the Act enumerates that colonizer would deposit 50% of the amount realised from time to time by him from the plot holders within the period of 10 days of its realization in a separate account to be maintained in a scheduled bank. It is also provided therein that the aforesaid 50% amount which is so deposited would only be utilized towards meeting the cost of the internal development works in the colony. Further stipulation in the said provision is that after the internal development works of the colony have been completed to the satisfaction of the Director, the colonizer would be at liberty to withdraw the balance amount. The remaining 50% of the amount would be deemed to have been retained by the colonizer to meet the cost of the land and external development works. Section 8 of the Act which is extracted herein above also provides that the Director could cancel the licence given to the developer colonizer if he contravenes any of the conditions of the licence or the provision of Act or the Rules made thereunder and after the cancellation of the licence, the Director may himself carry out or cause to be carried out the development works in a colony and recover such other charges as the Director may have to incur on the said development work from the colonizer and the plot holders.

18. Rules 4, 5 and 11 which are made part of the statutory rules give effect to the aforesaid provision of Section 3(3). The comparative reading of the provisions of Section 3(3)(a)(iv) and sub-clause (b) of clause (1) of the Licence Agreement would clearly show that the licensee-colonizer is required to construct at his own cost schools, hospitals, community centres and other community buildings or may get the same constructed by any other institution or individual. The developer also has the option to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centres and community buildings in which case the Government would be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit.

19. The said provision, therefore, gives three options for construction of such community centres and facilities like schools, hospitals, community centres and other community buildings. Such centres and buildings could be constructed by the developer himself or he may get the same constructed by any other institution or individual whereby such individual would be able to utilize the said building. In case the developer fails to exercise either of the aforesaid two options, a third option is also open to the developer under which he would transfer the said land, where the community facilities are to be established, free of cost to the Government in which case such schools, hospitals, community centres and community buildings could be constructed either by the Government itself or the said land could be transferred by the Government to any person or institution including a local authority on such terms and conditions as the Government may deem fit. The aforesaid provision is clear and explicit and there is no ambiguity in it. The only question therefore, which arises herein is, in a case where the land is transferred to the Government free of cost and when such schools, hospitals, community centres and community buildings are to be constructed either by the Government or any agency appointed by the Government whether the charges for internal community buildings is also required to be paid by the developer.

20. It was submitted by the counsel appearing for respondent No. 2 that the demand is made by the State Government as external development charges although the same is actually for making internal community buildings which was in the interest of proper development of the said colony. The High Court upheld the said contention on the ground that a colonizer is duty bound to complete the development works in the colony within a specified period and that the idea behind providing such a time limit was only to safeguard the interest of various plot holders/residents of the colony so that they might not be left at the lurch by the colonizer after selling plots to them. It was further held that since a complete control over the activities of the colonizer is envisaged under the provisions of the Act and the Rules, the action of the Director in calling upon the appellant Company to pay charges for some of the internal community buildings could not be termed as arbitrary.

21. The said findings arrived at by the learned Division Bench of the High Court appears to be in direct conflict and also in contradiction with the provisions of Sections 3(3)(a)(iv) of the Act and also all the terms and conditions provided in sub-clause (b) of clause (1) of the Licence Agreement. There is no mention at all of any requirement for the licensee to provide for or to make payment for the cost of construction of internal community buildings when the land is transferred to the Government free of cost. No such statutory basis could be shown either in the statute or in the licence agreement. When a specific question was put as to whether the amount was demanded towards internal community buildings or external development charges, the learned counsel, was constraint to admit that although the said amount was being demanded towards external development works but in fact the same was being demanded from the appellant towards internal community buildings which were required to be constructed by the appellant. There is no dispute with regard to the fact that the developer of the colony, namely the present appellant has carried out all the internal development works as required to be done which is statutorily provided for. A part of the community centre has also been constructed by the developer themselves but the entire community centre could not be developed by it or through its agencies and therefore the land allocated for the remaining community buildings/development have been transferred to the

Government free of cost.

22. Since the land has been given free of cost, it is now open for the State Government to get the remaining community buildings constructed either by themselves or through any agency or institution or individual at its cost in terms of the provisions of the Act, in which case the terms and conditions could be laid down by the Government for such community buildings, to be constructed on the land which is transferred to it by the appellant free of cost. The Government cannot in law demand that the buildings on the said lands which is to be transferred to them free of cost should also be constructed by the appellant and then transfer the land to them free of cost along with the construction thereon and on failure to construct to pay for the cost of construction. That would in fact be a case of an illegal and unauthorised demand as it has no statutory mandate. The respondent cannot demand transfer of the land free of cost and also the construction cost of the facilities to be provided in the said land.

23. When the provisions of Section 3(3)(a)(iv) are analysed, it would be apparent that the word used in the said provision is "land" and it has been specifically mentioned therein that if the colonizer does not construct the community buildings and facilities on its own or through its agency or organization or individual, then the said licensee would be required to transfer the said land set apart for the aforesaid purpose free of cost to the Government.

24. The Government's claim is therefore restricted to lands which the developer has failed to develop as community centres. In other words only that land which the developer has not been able to develop as community services facilities would stand transferred to the Government free of cost and the said land could be utilized by the Government for the aforesaid purpose either by itself or through its agency. If the legislature had intended that the licensee is required to transfer the land and also to construct the buildings on it or to make payment for such construction, the legislature would have made specific provisions laying down such conditions explicitly and in clear words in which event the provisions would have been worded in altogether different words and terms. It is well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statue.

25. In Ganga Prasad Verma (Dr.) v. State of Bihar [1995 Supp. (1) SCC 192], it has been held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

26. Mr. Anoop G. Chaudhary, learned senior counsel wanted us to read the provision of the Section 3(3)(a)(iv) of the Act by adding a few words to it, for according to him the latter part of the aforesaid section i.e. the obligation of the appellant to transfer to the Government at any time free of

cost the land, should be read by adding the provisions of the earlier part of the section i.e. to construct at his own cost the community centres and other community buildings on the lands set apart for this purpose.

27. The aforesaid contention apparently arises out of the complete misreading of the aforesaid provision. The responsibility regarding construction of community centres and other community buildings could be discharged by adopting any of the three options as mentioned hereinbefore and each one of such options is an independent option and one cannot be connected and related with the other. We cannot read the provision relating to construction at the own cost of the developer the schools, hospitals, community centres and other community buildings on the land set apart for this purpose, into an independent alternative provision relating to transfer of such land to the Government free of cost. The aforesaid option given to the developer to construct the community centres and other community buildings at its own cost is when he can utilize himself manage it. Therefore, we cannot read the aforesaid provision in the manner sought to be read by Mr. Chaudhary, for reading

by adding certain words in the aforesaid manner does not appear to be the intention of the legislature while enacting the aforesaid legislation, for otherwise the legislature would have explicitly said so in the body of the main part of the section itself.

28. Therefore, we not only reject the preliminary objections raised by the respondent No. 2 in this matter, but we also reject his contention that the aforesaid demand of Rs. 61,000/- per gross acre is permitted under the provision of Section 3(3)(a)(iv) of the Act.

29. We, therefore, now come to the last submission of the counsel appearing for respondent No. 2 which relates to issue of waiver and acquiescence in view of the fact that payment was made by the appellant which was demanded from him under the aforesaid letters.

30. The correspondences between the parties in respect of payment of the aforesaid demand would clearly establish that respondent No. 2 made a demand for the payment of the aforesaid amount of Rs. 61,000/- per gross acre failing which a threat was issued that the licence which was issued to it would stand cancelled. It is also pointed out on behalf of the respondent No. 2 that subsequently the respondent No. 2 has made it a policy of including expressly the value of the community buildings in the internal development works and ensuring that one fourth of the total cost of the internal development work could be secured by a bank guarantee. It is needless to say that if the provision would have been the same at the relevant time, in that event the situation would have been different but no such provision either in the Act or in the Rules or in any policy framed by the Government could be brought to our attention. Therefore, what we were required to consider was only the explicit provision of Section 3(3)(a)(iv) of the Act and the rules framed thereunder, which are extracted herein before in terms of which we find no obligation on the part of the appellant to pay for the construction of internal community buildings which was being demanded by the appellant as external development charges. Charges for construction of internal community buildings can never

be equated with the external development charges, so the demand itself was illegal. The view taken by us also derive support from the judgment of this Court in DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, [(2003) 5 SCC 622] wherein it was held that construction of schools, hospitals and community centres and other community buildings does not come within the purview of the term "development works" as the same come within the purview of the term "amenities". The Court in Para 33 held as under:

"Construction of schools, hospitals and community centres and other community buildings do not come within the purview of the term "development works". They come within the purview of the term "amenities". Only in relation to the development works the colonizer is bound to pay the development charges, carry out and complete development works. He has also the responsibility to maintain the same for a period of five years from the date of issue of the completion certification whereafter, the same is required to be handed over to the Government or the local authority as the case may be, free of cost."

31. Since the respondent No. 2 sought to justify the demand made on the ground that such demand is justified as internal community building, we have no other option but to hold that such demand could not have been made even as internal community buildings for no such power and jurisdiction was vested in the Government to make such a demand for the simple reason that there was neither any statutory support nor any policy decision in support of the same. Even in the Licence Agreement, nothing was contemplated to the effect that in addition to the liability to transfer the land set apart for the said buildings to the Government free of cost, on the contingency mentioned in the statue and relied in the Licence Agreement, the licensee is also required to pay for the construction of said buildings.

32. So far the issue with regard to the waiver and acquiescence is concerned, we find that such contention that the principles of waiver and acquiescence is attracted to the facts of the case is also not tenable. In the letter dated 08.02.1988 which was written by the appellant in response to the letter of respondent No. 2 dated 11.01.1988 on the subject of payment of external development charges, it was clearly stated that the revised rates which is since determined by the Director in their communication dated 18.9.1987 and its further revision are not covered by the clause of the agreements being referred in the recent communications. In paragraph 2 of the said letter it was specifically stated that the respondent No. 2 had included an amount of Rs. 61,000/- per gross acre on account of community buildings in the external development charges, which is not payable, as according to the requirements of the Act and licence the appellant was required to pay external development charges only and there was no mention of charges towards construction of internal community buildings in case the land set apart for the said purpose is transferred to the Government free of cost. Therefore there was a protest and demur on the part of the petitioner against the aforesaid demand.

33. In the case of Municipal Corpn. of Greater Bombay v. Hakimwadi Tenants' Assn., [1988 Supp

SCC 55], it was held by this Court that in order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.

34. It is thus established that the appellant on receipt of the demand issued by respondent No. 2 raised this objection regarding the charge and the demand made and the payment which was made by the appellant was due to the threat issued by respondent No. 2 that on failure of the appellant to pay the same its licence would stand cancelled.Such demand was made by the appellant under protest as aforesaid. Therefore, the principle of waiver and acquiescence will have no application in the present case and therefore we reject the said contention of the learned counsel appearing for respondent No. 2.

35. The appeal, therefore, stands allowed and we hold that respondent No. 2 was not authorized or justified in raising the aforesaid demand of Rs. 61,000/- per gross acre. Whatever payment is made in respect of the aforesaid demand was not payable by the appellant to the respondent No.2 as the said demand is held to be illegal, unjustified and unreasonable.The counsel for the appellant during the course of his arguments however submitted that the said amount now payable by the respondent No. 2 be adjusted towards the dues of the appellant. Accordingly we direct such adjustment of the amount in accordance with law.

36. We accordingly, dispose of this appeal in the light of the aforesaid directions and observations.